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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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### **REGULAR MEETING AGENDA**

### **TUESDAY, APRIL 8, 2014, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **WRITINGS DISTRIBUTED TO THE BOARD**

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Suite 505, San Diego, CA.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the March 2014 Regular Meeting (*Attachment A*)

#### **3. PRESENTATION / TRAINING**

- a) N/A

#### **4. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### **5. NEW BUSINESS**

- a) Executive Committee Report

-continued on next page-

## 6. UNFINISHED BUSINESS

- a) N/A

## 7. BOARD MEMBER COMMENTS

## 8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three to five minutes.

## 9. SHERIFF / PROBATION LIAISON QUERY

## 10. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (9)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 10-110

1. Death Investigation/Officer-Involved Shooting – SDPD Officer Wilson was fatally wounded following a Probation Fourth Waiver Search.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation; a review was conducted in accordance with CLERB Rules & Regulations, 4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions involving Death. SDPD Officer Wilson was fatally wounded following a Probation Fourth Waiver Search. There was no evidence to support an allegation of misconduct or negligence on the part of Probation Department personnel.

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#### 13-021

1. False Arrest - Deputy 4 placed the complainant under arrest for intoxication when he had not been drinking.

Recommended Finding: Action Justified

Rationale: According to the arrest report, the complainant stated he consumed "two beers". When the complainant aggressively approached the deputy on a public street, Deputy 4 said he could smell the odor of alcohol emitting from his person. The complainant was arrested for Penal Code § 69, Obstructing/Resisting an Executive Officer with Minor Injury because Deputy 4 was injured during his attempt to subdue the suspect. The evidence showed Deputy 4's conduct was lawful based upon the Penal Code, Case law and Sheriff's Policy & Procedures.

2. Misconduct/Retaliation - Deputy 4 said to the complainant, "I'll teach you to slam the door in my face."

Recommended Finding: Not Sustained

Rationale: The complainant said when he asked what he had done wrong, Deputy 4 made the cited comment. Deputy 4 denied saying any words to this effect and further stated the complainant's actions were expected, based upon his inebriation. Deputy 4 described the actions of the complainant and affirmed he had the right to enter his home without speaking to deputies. As there were no other witnesses to corroborate or refute either parties' conflicting statements, there was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force - Deputies 1, 3 and/or 4 repeatedly struck the handcuffed complainant with fists, knees and flashlight(s), then tasered him three times.

Recommended Finding: Not Sustained

Rationale: The complainant stated he was unimpaired, unarmed, and did not resist when Deputy 4 grabbed him in retaliation for a perceived slight. Deputy 4 believed the complainant to be intoxicated and attempted to detain him, but said the suspect would not comply with his commands and subsequently resisted arrest. Deputies 1 and 3 observed the struggle, attempted to assist Deputy 4 and said they also encountered the suspect's resistance. The number and placement of strikes is in dispute, as is the cause of the head injury. While deputies are empowered to utilize the level of force necessary to obtain compliance; it must be reasonable and necessary based upon the complainant's level of resistance, which is also in dispute by the complainant and a dependent witness. Absent audio and/or video recordings, there was insufficient evidence to prove the complainant was intoxicated, the extent of the complainant's reported resistance, and the level of disputed force utilized. In addition, the investigation was unable to determine if the complainant's head injury was caused by a flashlight, as reported by the complainant, or from contact with the pavement, as documented by deputies. There was insufficient evidence to prove or disapprove this allegation.

4. Misconduct/Truthfulness - Deputy 4 was "untruthful and committed perjury on the witness stand."

Recommended Finding: Not Sustained

Rationale: Deputy 4 upholds the testimony he provided to the court at the complainant's trial. The complainant said Deputy 4 was untruthful about his injury and changed and/or embellished his trial testimony. The complainant's belief about Deputy 4's documented injury is in error. The complainant makes assumptions about areas of contention that are his uncorroborated beliefs and has presented no evidence to support this allegation. Trial Transcripts were not provided by the complainant and could not be utilized as evidence without specified areas of alleged contention. There was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Truthfulness - Deputies 2 and 3 testified that the complainant used foul language, which was untrue.

Recommended Finding: Not Sustained

Rationale: The complainant said that deputies testified he used foul language during this incident, but could not (did not) state when or where. Deputies were questioned and said that while in the backyard, Deputy 3 said the complainant yelled profanities and Deputy 1 also heard the complainant while on the telephone, reference a female deputy with profanities. Furthermore, Deputy 4 said the complainant used profane language when approaching him on the street. As there were no audio recordings of this incident, there was insufficient evidence to prove the complainant's reported use of profanity versus his denial of it.

### **13-042**

1. Misconduct/Procedure – Deputy 1 failed to arrest an individual making threats and brandishing a weapon because of her relationship to a law enforcement officer.

Recommended Finding: Action Justified

Rationale: Deputy 1 was dispatched to a call involving a despondent woman in possession of a handgun. The woman's boyfriend safely secured the weapon and contacted her father, a San Diego Sheriff's sergeant, who then contacted Sheriff's Communications. Deputy 1 took the woman into protective custody, per Health & Institutions Code § 5150, Mental Health 72 hour Evaluation, because she was considered a danger to herself or others, and transported her to a hospital for evaluation. The evidence showed that the woman was taken into protective custody in lieu of arrest, but the act was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 refused to file an Emergency Protective Order for the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said that he asked Deputy 2 for assistance in filing an Emergency Protective Order because of prior contacts with the despondent woman and her display of a handgun. Deputy 2 determined that the incident was not domestic violence-related, and that there was no immediate and present danger necessitating the filing of an Emergency Protective Order under Family Code § 6250, Issuance and Effect of Emergency Protective Order, Request by Peace Officer. The complainant was advised to report to the San Diego Superior Court to file for a Restraining Order. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

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### **13-044**

1. False Arrest – Deputy 1 arrested the complainant for violation of a Restraining Order.

Recommended Finding: Action Justified

Rationale: Deputy 1 responded to a call by the complainant's former spouse, who reported that the complainant had violated a Restraining Order when he contacted her through electronic communications. Deputy 1 confirmed that the complainant was the restrained party in a valid Restraining Order, and confirmed there had been a violation of the order. The complainant was contacted at his child's school, arrested without incident for violation of Penal Code § 273.6, Disobeying Domestic Relations Court Order, and booked into San Diego Central Jail. The evidence showed that the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 attempted to dissuade the complainant from filing a citizen complaint.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied he dissuaded the filing of a complaint. The complainant went to the Sheriff's Station to file a complaint concerning his prior arrest for violation of a Restraining Order, and believed Deputy 1 attempted to deter filing the complaint by contacting a supervisor. Deputy 1 did not give the complainant a complaint form or attempt to resolve the matter; however, he immediately referred the matter to his supervisor per Department Policy and Procedure 2.21, Citizen Complaints, and the supervisor reportedly provided a complaint form per Department Policy and Procedure 3.2, Complaints Against Sheriffs. There were no audio or video recordings of the encounter, and therefore there was insufficient evidence to either prove or disprove the allegation.

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### **13-076**

1. Excessive Force - Deputy 1 grabbed the complainant from behind and took him to the ground with "intentional malicious and excessive force" in response to the complainant's use of profanity against him.

Recommended Finding: Summary Dismissal

Rationale: The complainant was released from custody on September 27, 2013, taken back into custody on November 3rd, and released on bond the following day. The complainant was advised that his case may be closed without further investigation if he failed to maintain contact and/or cooperate. Messages left for the complainant through family members went unanswered and principal witnesses failed to cooperate with the CLERB inquiry. The complainant's current whereabouts are unknown and he is unavailable for clarification to factual matters presented in his written complaint.

2. Misconduct/Discourtesy - Deputy 1 "taunted" the complainant; said he was "faking," and "you're not fuckin' hurt" after utilizing force.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

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**13-080**

1. False Arrest – Deputy 2 arrested the complainant without sufficient evidence, relying solely on the word of a co-worker.

Recommended Finding: Action Justified

Rationale: Deputy 2 responded to a radio call regarding a domestic violence incident that had occurred between the complainant and his wife. He contacted the complainant's wife and she reported that the complainant had grabbed her arm during an argument, causing visible bruising which she displayed to Deputy 2. Deputy 2 contacted the complainant at his place of employment, and after questioning him, believed that pursuant to PC § 836, Peace Officer Arrests, there was probable cause to arrest the complainant for a violation of PC § 273.5(A), Spousal/Cohabitant Abuse With Minor Injury. The evidence showed that the act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to properly process seized property.

Recommended Finding: Sustained

Rationale: Deputy 2 searched the complainant incident to a domestic violence arrest, locating two wedding rings that were confirmed to belong to the complainant's wife. The complainant acknowledged that he had given the rings to his wife, but had taken them back because of marital conflicts. Deputy 2 took possession of the rings and had them returned to the complainant's wife. Sheriff's Procedure 2.39, Processing Property, requires that all property which has been discovered, gathered or received in connection with departmental responsibilities, is processed in accordance with established departmental procedures. This process is further delineated in Sheriff's Procedure 6.29, Property Control System, which requires that all property or evidence of any kind, impounded or collected, must be entered into the property control system using NetRMS, and released to the Property/Evidence Manager or their designee. This provides a written record of the chain of custody of property seized, to ensure continuous accountability. Deputy 2 failed to process property according to Sheriff's Policy; the evidence supports the allegation and the act was not justified.

3. Misconduct/Procedure - Deputy 1 transported seized property to the complainant's wife.

Recommended Finding: Sustained

Rationale: Deputy 1 assisted Deputy 2 when asked to deliver confiscated property to the complainant's wife. Sheriff's Procedure 2.39, Processing Property, requires that all property which has been discovered, gathered or received in connection with departmental responsibilities, is processed in accordance with established departmental procedures. Per Procedure 6.29, Property Control System, this procedure includes entering into the property control system all property and evidence of any kind that has been impounded or collected, and releasing this property to the Property/Evidence Manager or their designee. Per Sheriff's Policy 2.3, Violation of Rules, deputies are prohibited from committing any acts which constitute a violation of any of the rules, regulations, directives, orders or policies of the department, and are responsible for their own acts. Deputy 1

assisted Deputy 2 by transporting and delivering seized property that had not been handled in accordance with departmental procedure. This act was in violation of policy and was not justified.

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**14-007**

1. Misconduct/Procedure- Deputy 1 conducted a traffic stop and cited the complainant for "a bad brake light."

Recommended Finding: Action Justified

Rationale: Deputy 1 observed a malfunctioning brake light on the complainant's vehicle, as well as a dark tint on his windshield and front side windows, giving him reasonable suspicion to conduct a traffic stop. The complainant was thusly cited for VC §§ 24252(a), Lighting Equipment Requirements, and 26708(a)(1), Material Obstructing or Reducing Driver's View, after Deputy 1 determined that the complainant was in violation of these California vehicle codes. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure- Deputy 1 cited the complainant for his tinted windows.

Recommended Finding: Action Justified

Rationale: See Rationale #1.

3. Misconduct/Intimidation- Deputy 1 threatened to "write the complainant up" if he continued talking.

Recommended Finding: Not Sustained

Rationale: Deputy 1 reported that the complainant was hostile, defiant and argumentative throughout the traffic stop, accusing the deputy of not knowing the law and harassing him for no apparent reason. Deputy 1 denied that he threatened to "write the complainant up" if he continued talking, reporting that, in context, he only discussed with the complainant the laws related to his tint and the option available to additionally cite him for the questionable tint on his windshield. There was insufficient evidence to demonstrate a tone or context of "intimidation" in Deputy 1's statement to the complainant, and therefore insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy- Deputy 1 called the complainant a "Jack Ass."

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that he called the complainant a "Jack Ass," or insulted him in any way. He reported that the complainant was hostile and argumentative during the entire traffic stop, and he was beginning to make a reference to how the complainant acted during this contact, when he stated to the complainant, "Quit being a Ja...", before stopping himself and instructing the complainant to "just sign the citation." There was insufficient evidence to prove or disprove that Deputy 1's incomplete statement was a violation of Department Procedure 2.22, Courtesy.

5. Misconduct/Procedure- Deputy 1 did not provide his name to the complainant when requested.

Recommended Finding: Action Justified

Rationale: Deputy 1 reported that the complainant requested his name and badge number while signing the citation. Deputy 1 responded, informing the complainant that this information was located on the bottom of the citation and that he would receive a copy of that information after signing it. Sheriff's Policy 2.20, Identification, requires deputies to furnish their name and identification number to any person requesting that information. There is, however, no prohibition against providing that information in written form. The evidence showed that the alleged act did occur, but was lawful, justified and within policy.

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1. Misconduct/Discourtesy – Deputy 1 repeatedly refused to answer the complainant’s questions regarding why she was contacted.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied repeatedly refusing to answer the complainant’s questions regarding the purpose of this traffic stop. Deputy 1 provided an audio recording of this contact, in which at one minute and fifty eight seconds into the recording, he can be heard explaining to the complainant the reason for the traffic stop. The audio recording of the beginning portions of this contact, however, was muffled and unintelligible, so it cannot be determined if the complainant repeatedly queried Deputy 1 regarding why she was contacted. Absent a clearer recording of the initial portion of this contact, there was insufficient evidence to either prove or disprove the allegation.

2. Illegal Search or Seizure – Deputy 1 confiscated the complainant’s keys.

Recommended Finding: Action Justified

Rationale: Deputy 1 reported that prior to, and during his contact with the complainant, she continually rummaged through different areas in her vehicle. His training and experience had shown that when people are seen moving rapidly inside a vehicle at the time of a traffic stop, they may be hiding contraband or reaching for weapons. The complainant was also driving a vehicle with out of state plates that did not match the vehicle description, and once contacted had lied to Deputy 1 about having a cell phone. Deputy 1 further reported that he had experienced situations where motorists had panicked or become so distracted that they accidentally drove the vehicle after stopping because the motor was still running. Citing officer safety issues, due to the complainant’s continual rummaging and distracted state, as well as the complainant’s untruthful statements, Deputy 1 asked for the complainant’s keys and cell phone and immediately placed them both on top of her vehicle. The act did occur, but was lawful, justified and proper.

3. Illegal Search or Seizure – Deputy 1 confiscated the complainant’s cell phone.

Recommended Finding: Action Justified

Rationale: Deputy 1 reported that the complainant was unlicensed, drove a vehicle with out of state plates that did not match the vehicle description, and demonstrated a number of suspicious behaviors prior to and during this contact. Further, a cell phone was observed despite the complainant’s statement that she did not have one in the car. Deputy 1 also reported having been on traffic stops with unlicensed drivers who have called other people to their location in an attempt to overwhelm the officer, presenting an officer safety issue. Case law provides that during a lawful detention, officers are authorized to take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop. Deputy 1 exercised this option by temporarily confiscating the complainant’s cell phone and placing it on the top of her vehicle. This act did occur, but was lawful, justified and proper.

4. Illegal Search or Seizure - Deputy 1 searched the contents of the complainant’s cell phone.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied that he searched the contents of the complainant’s cell phone, but did observe a map displayed on its screen while setting it on top of the complainant’s vehicle. An audio recording of this contact did not contain any statements or dialogue related to a phone search, leaving insufficient evidence to either prove or disprove the allegation.

5. Illegal Search or Seizure – Deputy 1 conducted a traffic stop that lasted an excessive amount of time.

Recommended Finding: Action Justified

Rationale: There were a number of complicated issues associated with this traffic stop, requiring its duration to be longer than normal. The complainant was unlicensed in the State of California, driving a vehicle with an out of state license plate that did not match the vehicle description reported by dispatch; the complainant provided

an Oklahoma title and registration for the vehicle, both dated 6 months prior to the incident date, in violation of California registration laws, and the complainant had a number of discrepancies in her statements, further prolonging this contact. Case law establishes that a routine traffic stop "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." It also acknowledges, however, that it is impossible to set an absolute time limit for a reasonable detention because it depends totally on the circumstances. This traffic stop was not routine, given the number of complicated issues involved, and required additional time to complete. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

6. Misconduct/Intimidation – Deputy 1 threatened the complainant, stating that the next time she was pulled over, it would be “violent,” she would be “cuffed” and “guns would be drawn on her.”

Recommended Finding: Unfounded

Rationale: Deputy 1 denied, and the audio recording of this contact corroborated, that he threatened the complainant with “violence,” “cuffs,” and that “guns would be drawn on her” the next time she was pulled over. In context, Deputy 1 explained to the complainant that, because her vehicle’s out of state license plate did not match the vehicle description in California’s records, officers pulling her over may believe her vehicle to be stolen and conduct a “Hot Stop.” During a “Hot Stop,” there is a heightened tension, given the potential that weapons may be involved, possibly requiring law enforcement officers to draw their guns, presenting a potentially violent situation. Deputy 1’s statements, including context and tone, are clearly heard in audio recordings provided by Deputy 1 and the complainant, and the evidence showed that the alleged act or conduct did not occur.

7. Misconduct/Procedure – Deputy 1 cited the complainant for driving an unregistered vehicle.

Recommended Finding: Action Justified

Rationale: The complainant provided Deputy 1 an Oklahoma registration for her vehicle dated 8/29/2013; approximately 6 months prior to the citation date. According to VC § 6700, Use of Foreign License Plates: Limitation, the owner of any vehicle may operate the vehicle in this state until gainful employment is accepted in this state or until residency is established in this state, whichever occurs first. Application to register the vehicle is required within 20 days after gainful employment is accepted in this state or residency is established in this state. The complainant reported to Deputy 1 that she moved to this state approximately 4-6 months ago, and provided an in-state address which established her proof of residency in California. The complainant did not register her vehicle in California, in violation of VC § 4000, Registration Required, and was cited accordingly. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

8. Misconduct/Procedure – Deputy 1 cited the complainant for driving without a license.

Recommended Finding: Action Justified

Rationale: The complainant provided Deputy 1 an Oklahoma Driver License, although reporting an in-state address secured approximately 6 months prior to the citation date; establishing residency in California. California law requires that drivers apply for a California driver license within 10 days of establishing residency in the state. VC § 12500, Unlawful to Drive Unless Licensed, states that “a person may not drive a motor vehicle upon a highway (which includes streets), unless the person then holds a valid driver's license issued under this code.” The complainant was in violation of this code and cited accordingly. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

9. Misconduct/Procedure – Deputy 1 cited the complainant for failing to stop at a railroad.

Recommended Finding: Action Justified

Rationale: The complainant was in violation of VC § 21461, Obedience by Driver to Official Traffic Control Devices, when she stopped at an intersection with her rear tires positioned on the train tracks, despite posted signage stating, "Do not stop on tracks." The complainant provided statements to Deputy 1 that she was aware of her vehicle stopping on the train tracks, as well as a statement to the CLERB Investigator indicating the same. The complainant was cited for this vehicle code violation, and the evidence showed that Deputy 1’s actions were lawful, justified and proper.



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**14-012**

1. Illegal Search & Seizure – Deputy 1 contacted and detained the complainant because of out-of-state vehicle plates.

Recommended Finding: Summary Dismissal

Rationale: Citation #79866 was issued by the California Highway Patrol (CHP) over whom CLERB has no authority. The Review Board lacks jurisdiction due to CLERB Rules & Regulations 4.1: The Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department.

2. Misconduct/Procedure – Deputy 1 failed to provide his name upon request.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Intimidation – Deputy 1 threatened the complainant with arrest and vehicle impoundment and forced his signature through “intimidation, coercion and duress.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – Deputy 1 wrote an illegible citation.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

5. False Arrest – Deputy 1 cited the complainant for false infractions.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

6. Misconduct/Discourtesy – Deputy 1 mocked a witness by sarcastically repeating all information told to the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

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*End of Report*